

ORIGINAL

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U.S. DISTRICT COURT E.D.N.Y.



APR 01 2020



PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT		District: EASTERN
Name: Anthony Joyner	Prisoner No. 17-A-1255	Case No.
Place of Confinement: Upstate Correctional Facility, P.O. Box 2001, Malone, New York 12953		
Name of Petitioner (include name under which convicted) Anthony Joyner		Name of Respondent (authorized person having custody of petitioner) Donald Uhler, Supt. of Upstate C.F.
v.		
The Attorney General of the State of New York: Letitia James, The Capital, Albany, New York 12224		
PETITION		
1. Name and location of court, which entered the judgment of conviction under attack: Supreme Court of the State of New York, County of New York, Criminal Term, 100 Centre Street, New York, New York 10013		
2. Date of judgment of conviction: January 25, 2017		
3. Length of sentence: Indeterminate 16 years to life sentence		
4. Nature of offence involved (all counts): one count of Robbery in the Second Degree [Penal Law §160.15]		
5. What was your plea? (check one) (a) Not Guilty <input checked="" type="checkbox"/> X (b) Guilty <input type="checkbox"/> (c) Nolo Contendere <input type="checkbox"/> If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____ _____		
6. If you pleaded not guilty, what kind of trial did you have? (check one) (a) Jury <input checked="" type="checkbox"/> X (b) Judge only <input type="checkbox"/>		
7. Did you testify at trial? Yes <input checked="" type="checkbox"/> X No <input type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> X No <input type="checkbox"/>		



9. If you did appeal, answer the following

(a) Name of court: **Appellate Division, Second Department**

(b) Result: **Affirmed**

(c) Date of result and citation, if known: **October 29, 2019, 176 A.D.3d 607 (1st Dept. 2019)**

(d) Grounds raised: **The police officers did not have probable cause for appellant's arrest on suspicion of robbery**

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court: **New York Court of Appeals, Court of Appeals Hall, 20 Eagle Street, Albany, NY 12207-1095**

(2) Result: **Denied**

(3) Date of result and citation, if known: **May 31st, 2013, 21 N.Y.3d 945 (2013)**

(4) Grounds raised: **Same as above**

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest court having jurisdiction the result of action taken on any petition, application, or motion?

- | | | |
|---------------------------|------------------------------|-----------------------------|
| (1) First petition, ect. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (2) Second petition, ect. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

(d) If you did *not* appeal from the adverse action on any petition, application, or motion, explain briefly, why you did not:

Petitioner has not exhausted all of his state remedies at this time. Petitioner is currently working on obtaining evidence/information pertaining to issues that he wishes to argue on a collateral attack, so he asks this Honorable Court to hold this petition in abeyance until his State remedies are exhausted.

12. State grounds *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of a charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation on the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury, which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right to appeal.

A. Ground one: **The police did not have probable cause for appellant's arrest on suspicion of a robbery.**

Supporting FACTS (state *briefly* without citing cases or laws): **In this case, petitioner was arrested at gunpoint, for the robbery of a Claire's store. At the time of his arrest, the 53 year old petitioner was sitting down on a bench in a subway station. He was not engaged in any suspicious, much less illegal behavior of any kind. Nonetheless, the police immediately arrested the petitioner based on the following facts: (he partially matched a very general description of the perpetrator, "Black Male, 35 years old, 5'11" tall, dark clothes, black and white sneakers), at 8:00PM two days before Christmas, petitioner was sitting on a bench in a busy Manhattan subway station that happened to be located in the same direction that the perpetrator headed when leaving the store and a woman**

in the subway station, who was entirely unknown to the police, pointed towards petitioner without explanation the petitioner was immediately handcuffed on the subway platform and a police officer conduct a search for "bulges", went into his coat pocket and pulled out paper money and rolls of coins. The question presented here as the defendant's counsel argued that the police did not have probable cause to arrest the petitioner because there were significant discrepancies between his appearance and the description of the perpetrator, including that petitioner was 53 years old, not 35, and he was sitting down so the police officers could not establish his height. Thus, the hearing court and the Appellate Division relied on the unexplained gesture toward the petitioner by the stranger on the subway platform to fill the gaps and find that the search and arrest were both lawful.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly, what grounds were not so presented, and give your reasons for not presenting them:
-
-

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack:
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (a) At preliminary hearing: **None**
- (b) At arraignment: **Archana Prakash, Esq., 317 Lenox Avenue, New York, New York 10027**
- (c) At trial: **Archana Prakash, Esq., 317 Lenox Avenue, New York, New York 10027**
- (d) At sentencing: **Archana Prakash, Esq., 317 Lenox Avenue, New York, New York 10027**
- (e) On appeal: **Christina Swarns, Esq., Appellate Defenders 11 Park Place, New York, New York 10007**
- (f) In any post-conviction proceedings: **None**
- (g) On appeal from any ruling in a post-conviction proceeding: **None**

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at the same time?
Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

March 20, 2020
Date

Anthony Joyner
Signature of Petitioner

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

S.S.:

COUNTY OF FRANKLIN)

I, Anthony Joyner, being duly sworn, deposes and says:

I am the petitioner in the enclosed action.

I have on this 20 day of March 2020, petitioner placed and submitted within the institutional mailbox located at: Upstate Correctional Facility, P.O. Box 2001, Malone, New York 12953, a true and accurate copy of
the following:

PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS

To be mailed and delivered via the United States Postal Service upon the following:

Original and Two Copy Sent to:

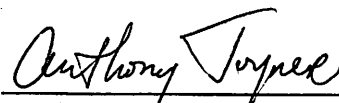
Clerk of the Court
(C/O Pro-Se Clerk's Office)
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Duplicate Copy Sent to:

D. Uhler, Superintendent
Upstate Correctional Facility
P.O. Box 2000
Malone, New York, 12953

Duplicate Copy Sent to:

Letitia James
The Capital
Albany, New York 12224



Anthony Joyner, DIN # 17-A-1255

(Petitioner, Pro-Se)


Upstate Correctional Facility

P.O. Box 2001

Malone, New York, 12953

Sworn to Before Me this 20

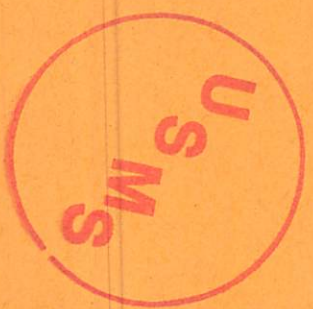
Day of March 2020.



Notary Public

David F. Viau
Notary Public State of New York
Lic. No. 01VI6332070
County of Franklin
My Commission Expires on 10/26/2023

Anthony Joyner 174-1255
Upstate Correctional Facility
P.O. Box 2000
309 Bare Hill Road
Malone, NY 12953



Clerk of the Court
(C/O Pro-Se Clerk's Office)
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Correctional Facility



Upstate

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03/25/2020

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Legal Mail



Anthony Jeyare
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